IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.130 OF 2005

Bombay Stock Exchange ("BSE") ...Petitioner.

Vs.

The State of Maharashtra & Ors. ...Respondents.

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Mr.Virag Tulzapurkar with Mr.Sirish Vardhan i/b.M.& M.Legal Ventures for the Petitioner.

Mr.Anjad Sayeed, AGP for Respondent Nos.1 and 2.

Mr.Kirit Munshi i/b. Shaunak Satpute & Co. for Respondent No.5.

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**CORAM : DR.D.Y.CHANDRACHUD, J.**

February 24, 2005.

**P.C. :**

1. This Petition was, by an order dated 31st January 2005, set down for hearing and final disposal at the stage of admission since the issue that arises is covered by several judgments of this Court and of the Supreme Court. Pleadings have been completed and with the consent of all the Learned Counsel, the Petition is taken up for hearing and final disposal.

2. The Bombay Stock Exchange has, in these proceedings under Article 226, challenged the legality and validity of notices-cum-orders dated 17th August 2004, 9th September 2004 and 29th September 2004 issued by the Special Recovery and Sales Officer in the Co-operation Department of the Government of Maharashtra to the extent to which an attachment has been levied on the membership card of the Third Respondent. The Third Respondent is a Company incorporated under the Companies Act, 1956 and is a member of the Stock Exchange. The Fifth Respondent is a Co-operative Bank registered under the Maharashtra Co-operative Societies Act, 1960. The Bank filed an application for the issuance of a recovery certificate in respect of an amount due under a certificate issued by the Assistant Registrar of Co-operative Societies in R.C.Case No.3020 of 2004 on 27th July 2004. The Fourth Respondent and a Company by the name of Soundcraft Industries Ltd. are the principal borrowers and the Judgment Debtors. The total amount which was due under the recovery certificate issued by the Assistant Registrar is stated to be in an amount of Rs.5,07,57,788/- together with future interest. The Stock Exchange has in its petition stated that on 17th August 2004, a notice-cum-interim order was

received from the Second Respondent, the Special Recovery Officer, calling upon the Exchange to provide material information of the business undertaken by the Third Respondent as a member of the Exchange for the last one year including copies of ledger extracts, membership documents and terms and conditions governing such membership. This was followed by a notice-cum-order dated 9th September 2004 by which the Second Respondent while attaching the membership card, restrained the Petitioner from dealing with or disposing of the card or rights of the Third Respondent as a member of the Stock Exchange. By its reply dated 15th September 2004, the Exchange stated that the membership card is merely a personal privilege or a permission granted to a member to facilitate the business of the purchase and sale of securities on the Exchange and that in a series of judgments, the card has been held not to constitute property. The Second Respondent by a notice-cum-order dated 29th September 2004 is stated to have declined to withdraw the attachment and directed that the attachment should be maintained until the matter is heard and finally disposed of.

3. The Stock Exchange questions the attachment on the ground that the membership card is according to

settled principles of law, not property which is capable of attachment. The question which arises before this Court is not res integra. In **Sejal Rikeen Dalal v. Stock Exchange Bombay**, AIR 1991 Bombay 30, Mrs.Justice Sujata Manohar (as Her Ladyship then was) speaking for this Court considered the relevant provisions of the Securities Contracts (Regulation) Act, 1956 and the rules and bye-laws governing the Stock Exchange. The Learned Judge held that membership in the Stock Exchange under Rule 5 of the Rules governing the Exchange is not a transferable right, but is only a permission granted by the Stock Exchange to trade therein. On the death of a member, the Learned Judge held, his right to nomination would cease and vest in the Exchange. There is, therefore, no property in membership.

4. This issue is also the subject matter of several decisions of the Supreme Court. In **Vinay Bubna vs. Stock Exchange**, Mumbai, AIR 1999 SC 2517, a Bench of two Learned Judges of the Supreme Court confirmed the view taken by this Court in the judgment which was under appeal and held that the rules governing the Stock Exchange showed that membership of the Exchange constitutes a personal permission from the Exchange to exercise the rights

and privileges attached thereto subject to the rules, bye-laws and regulations of the Exchange. The membership card of a share broker is held as not constituting his personal property. The same view was reiterated by a Bench of three Learned Judges of the Supreme Court in **Stock Exchange, Ahmedabad v. Asstt.Commissioner of Income Tax, Ahmedabad,** AIR 2001 SC 1071. The Supreme Court held that membership of the Exchange is not property of the assessee and it, therefore, could not be attached under Section 281B of the Income Tax Act, 1961.

5. The attention of the Court is also drawn to a judgment delivered by S.H.Kapadia, J. (as His Lordship then was) on 9th June 2001 in **The Stock Exchange, Mumbai vs. The Custodian** (Misc.Application No.710 of 1999 and connected matters) in which the same principle has been reiterated. A Division Bench of this Court of S.H.Kapadia, J. (as he then was) and J.P.Devadhar, J. followed the said position in law in **Stock Exchange vs. V.S.Kandalgaonkar,** 2004(1) Bom.C.R. 274.

6. In view of the settled principle as it emerges from these cases, the action of the Stock Exchange

in attaching the membership card of the Third Respondent is clearly unsustainable. There is no property in the membership card which is capable of attachment since membership only confers a personal permission from the Stock Exchange to exercise the rights and privileges attached thereto subject to the rules, bye-laws and regulations of the Exchange. That apart, the Third Respondent which is a member of the Exchange is not even a judgment debtor. The Judgment debtor in the present case, is the Fourth Respondent who is stated to be a Director and shareholder of the Third Respondent. Therefore, in any event, the action of the Second Respondent is unsustainable.

7. In the circumstances, this petition has to be allowed and is accordingly allowed by quashing and setting aside the notices-cum-orders dated 17th August 2004, 9th September 2004 and 29th September 2004 (Exhs.A, B and D respectively) in so far as the Petitioner is concerned and to the extent to which an attachment is sought to be levied in respect of the membership card of the Third Respondent. Since the limited issue before the Court related to the attachment that has been levied on the membership card, it is clarified that this Court has had no occasion to consider the

validity of the order of attachment in respect of the other areas wherein the attachment operates. The Petition is allowed to the aforesaid extent. There shall be no order as to costs.

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